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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/533,170

10/19/2005

Fabio Pedrini

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BOYLE FREDRICKSON S.C.
840 North Plankinton Avenue
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EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT

PAPER NUMBER

3782

NOTIFICATION DATE

DELIVERY MODE

06/24/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

Office Action Summary	Application No. 10/533,170	Applicant(s) PEDRINI, FABIO	
	Examiner JUSTIN M. LARSON	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 15, 23-26, 30 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-22, 27-29 and 32-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/29/05, 11/14/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species:

I. An equipment carrier without a cord winding/housing mechanism (Figures 1-14) and claims 1-4, 10-26, 30-34, and 36.

II. An equipment carrier with a cord winding/housing mechanism (Figures 15-28) and claims 1-14, 16-22, 27-29, and 32-36.

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-4, 16-22, 32-34, and 36 are generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement

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may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

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3. During a telephone conversation with Andrew McConnell on 6/11/09 a provisional election was made without traverse to prosecute the invention of Species II, claims 1-14, 16-22, 27-29, and 32-36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15, 23-26, 30, and 31 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. During the conversation with Mr. McConnell, he asserted that all claims seemed to read on Species II. After further reviewing the claims, Examiner finds that the withdrawn claims as mentioned above are clearly directed to Species I. Regarding claim 15, it is Species I that uses an indentation type clamping mechanism, not Species II. Regarding claims 23-26, 30, and 31, it is Species I that uses a strap having teeth, not Species II.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 13, 14, 16-22, 27-29, and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "each hook carrying member" in lines 1-2 and "the associated forwardly facing end" in line 2. There is insufficient antecedent basis for these limitations in the claims.

Claim 14 recites the limitation "said upright sections" in line 2. There is insufficient antecedent basis for the limitation in the claims.

Claim 19 recites the limitation “said means for mounting” in lines 1-2 and “said cross-member” in line 2. There is insufficient antecedent basis for these limitations in the claims.

Claim 27 recites the limitation “its teeth” in line 6. There is insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 4-6, 9, 10, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Jeong (US 2002/0117524 A1).

Regarding claims 1, 5, 10, and 32, Jeong discloses an equipment carrier comprising: a frame having lower engagement means (52) as claimed; a structure (46) as claimed; at least one vehicle engaging member (14) as claimed; a strap member (26) having upper engagement means (28) as claimed; at least one support (22) provided with strap engaging and tensioning means as claimed [0019].

Regarding claims 4 and 9, the vehicle engaging member (14) is mounted to the support to the extent claimed (any part of the rack is considered mounted to any other part of the rack to the degree that all parts of the rack are interconnected).

Regarding claim 6, the support (22) includes strap engaging means in the form of strap winding means [0019].

8. Claims 1, 4, 5, 9-13, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Graber (US 4,863,080 A).

Regarding claims 1, 5, 10, and 32, Graber discloses an equipment carrier comprising: a frame having lower engagement means (31/32) as claimed; a structure (12) as claimed; at least one vehicle engaging member (16) as claimed; a strap member (41) having upper engagement means (42) as claimed; at least one support (43) provided with strap engaging and tensioning means as claimed (the various apertures of buckles 43 serve as engaging and tensioning means to the extent claimed).

Regarding claims 4 and 9, the vehicle engaging member (16) is mounted to the support to the extent claimed (any part of the rack is considered mounted to any other part of the rack to the degree that all parts of the rack are interconnected).

Regarding claims 11 and 12, the vehicle engaging member is in the form of a U-shaped rocking member (17) having engaging feet as claimed.

Regarding claim 13, hook carrying members (31) are mounted on the frame as claimed.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 3, 7, 8, and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeong as applied above in view of Huang (US 6,007,053 A).

Regarding claims 2, 3, 7, and 8, the carrier of Jeong includes the claimed features except for the strap engaging and tensioning means comprising a ratchet positioning mechanism, a tensioning member, and a release control member. Jeong seems to disclose a similar mechanism (22) but does not specify on the mechanism's details. Huang, however, discloses a strap adjustment member comprising a ratchet positioning mechanism (50/20), a tensioning member (40), and a release control member (70) that allows for fine tightness adjustment (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the strap adjustment members of Jeong with ratcheting mechanisms in order to allow for fine tightness adjustment, as taught by Huang.

Regarding claims 27-29, the strap winding means of the modified Jeong carrier includes a roller (20, Huang) as claimed; at least one ratchet wheel (22, Huang) as claimed; a retainer (60, Huang) as claimed; a lever (40, Huang) as claimed; a toothed pawl (50, Huang) as claimed; and a trigger member (70, Huang) as claimed.

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11. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber as applied to claim 1 above in view of Huang.

The carrier of Graber includes the claimed features except for the strap engaging and tensioning means comprising a ratchet positioning mechanism, a tensioning member, and a release control member. Graber simply discloses the use of a buckle for adjusting the strap length. Huang, however, discloses a strap adjustment member comprising a ratchet positioning mechanism (50/20), a tensioning member (40), and a release control member (70) that allows for fine tightness adjustment (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the strap adjustment buckles of Graber with ratcheting mechanisms in order to allow for fine tightness adjustment, as taught by Huang.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graber as applied to claim 12 above in view of O'Connor (US 4,298,151 A).

The carrier of Graber includes the claimed features except for the support being mounted via adjustable connecting means to the frame. O'Connor, however, discloses a related carrier and teaches that it is known for a support (22) to be mounted via adjustable connecting means (30) to the frame in order to accommodate differently shaped vehicles to which the rack might be mounted (col. 6 line 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have attached the straps and support members of Graber to the frame via adjustable connecting means in order to better accommodate differently shaped vehicles, as taught by O'Connor.

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13. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber in view of O'Connor as applied to claim 14 above, further in view of Littlepage et al. (US 5,385,280 A).

Regarding claim 16, the modified Graber carrier includes the claimed features except for the connecting means being in the form of clamp means adapted to be tightened around the frame by means of a screw. Littlepage, however, teaches (Figure 2) that it is known to connect a device to the vertical component (24) of a carrier frame using connecting means in the form of clamping means (52) adapted to be tightened around the frame by means of a screw (46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the connecting means of the modified Graber carrier with clamp means, as taught by Littlepage, so that the position of the support could be varied and maintained along the length of the frame.

Regarding claim 17, the modified Graber carrier includes the claimed features except for the frame having a flat surface. The frame of Graber is round. O'Connor, however, teaches that it is known for such a frame to have flat sides. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the frame of the modified Graber carrier with flat sides since such a frame design was known in the art, as taught by O'Connor. Examiner is of the position that the screw of the clamp means of the modified Graber carrier is capable of engaging the flat surface to the extent claimed.

Regarding claim 18, the clamp means of the modified Graber carrier can be considered the claimed supporting structure that includes a U-bent metal sheet having cut-away portions as claimed, as taught by Littlepage.

14. Claims 19 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber as applied to claim 13 above in view of Pedrini (US 5,495,970 A).

Regarding claim 19, the carrier of Graber includes the claimed features except for an array of angularly spaced axial ridges being used to mount the equipment-carrying structure. Pedrini, however, discloses a related carrier and teaches that it is known for a frame's cross member (4a) to include ridges (4) upon which a toothed hub of an equipment carrier (5) is mounted in order to vary the angle of the equipment carrier (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed ridges on the cross member of Graber and a toothed hub on the carrying structure of Graber in order to allow for varying the angle of the structure, as taught by Pedrini.

Regarding claim 33, the equipment carrying structure of the modified Graber carrier is selected as claimed.

15. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber in view of Pedrini as applied to claim 19 above, further in view of Bloemer et al. (US 5,573,165 A).

The modified Graber carrier includes the claimed features except for the ridges being on an engagement member surrounding the cross member where the engagement member and hub are of split construction. Bloemer, however, discloses a

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related carrier and teaches that it is known for an engagement member (106) to be placed between a cross member (112) and the hub (104) of an equipment carrier (100), where the engagement member and the hub are of split construction (Figure 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have placed an engagement member between the cross member and equipment carrier of the modified Graber carrier, as taught by Bloemer, as such design was known in the art and to form the ridges on the engagement member so that when removed, the rack could be used with equipment carriers not having toothed hubs. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the hub of the modified Graber carrier of split construction, as taught by Bloemer, so that the hub could be clamped tightly to the cross member.

16. Claims 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graber in view of Pedrini, and further in view of Ferman (US 2002/0047031 A1).

The carrier of Graber includes the claimed features except for means for mounting and curved lower sections of the frame to which hook carrying members having hooks are attached.

Regarding the means for mounting, Pedrini discloses a related carrier and teaches that a means (4) for mounting the equipment carrier to the frame is utilized in order to vary the angle of the equipment carrier. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used means

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for mounting, as taught by Pedrini, on the Graber carrier in order to vary the angle at which the equipment carrier was held.

Regarding the curved lower sections with hooks, Ferman discloses a related carrier and teaches that lower curved portions (5,6) with hooks (21) as used to secure the lower end of the carrier to a vehicle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the hook members (31) of Graber with curved sections having hooks, as taught by Ferman, as a mere substitution of known lower carrier mounting means.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN M. LARSON whose telephone number is (571)272-8649. The examiner can normally be reached on Monday-Friday, 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justin M Larson/
Examiner, Art Unit 3782
6/20/09